* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 7th November, 2007

Crl.M.C.No.3592/2006

\# **DR. V. NATRAJAN** .....Petitioner

! Through Mr. Maninder Singh with Mr. Ajay Kumar, Advocates

versus

$ **STATE & ANR.** ..... Respondents

^ Through Mr.O.P.Saxena, APP for State.

Mr. Prashant Mendiratta, Advocate for R-2.

CORAM:

* **HON'BLE MR. JUSTICE P.K.BHASIN**

1. Whether Reporters of local papers may be allowed to see the judgment?(No)
2. To be referred to the Reporter or not?(No)
3. Whether the judgment should be reported in the digest?(No)

JUDGMENT

P.K.BHASIN, J:

The present petition is filed under section 482 of the Code of Criminal Procedure for quashing of complaint case titled as 'Nairsons I.T. Pvt. Ltd. Vs. Sai Priya Consultants (P) Ltd. & Ors.' under Sections 138/142 of the Negotiable Instruments Act pending in the Court of Metropolitan Magistrate, Karkardooma Courts as also the order dated 03-01-2003 of the learned Metropolitan Magistrate whereby the present petitioner was summoned as an accused.

2. The Respondent no. 2 complainant, filed a complaint case against M/s. Sai Priya Consultants Pvt. Ltd. and its Directors under Section 138 read with 141 of the Negotiable Instruments Act and in that case petitioner herein was summoned as an accused who appeared in Court and moved an application under Section 245 Cr.P.C. for discharge on the ground that since he was only a sleeping director of the Company and was not involved in the day to day functioning as well as conduct of the business of the Company and also that at the time of alleged offence in the year 2002 he was gainfully employed elsewhere he was not responsible for any act of M/s. Sai Priya Consultants Pvt. Ltd. It is alleged in the petition that the application of the petitioner-accused for his discharge was rejected by the Metropolitan Magistrate referring to the judgment passed by Hon'b le Supreme Court in case "**Adalat Prasad Vs. Rooplal Jindal", 2004 (3) JCC 1347.** Feeling aggrieved, the petitioner filed this petition before this Court for quashing of the complaint and the summoning order.

3. I have heard the learned counsel for the petitioner and learned counsel for the respondent no.2, complainant.

4. The only submission made by the learned counsel for the petitioner in support of his prayer for quashing of the complaint qua the petitioner was that the complaint does not contain any averment from which it could be inferred that the petitioner was in any way in-charge of and managing day to day affairs of the Company, namely, M/s. Sai Priya Consultants Pvt. Ltd. and therefore, he could not

have been summoned as an accused in respect of the offence allegedly committed by the said Company. Learned counsel placed reliance upon two judgments of the Hon'ble Supreme Court reported as "**S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla & Anr.", 2005 (8) SCC 89** and **2007 (1) JCC 112, "N.K.Wahi Vs. Shekhar Singh & Ors.".** On the other hand, learned counsel for the respondent no. 2 contended that there was no deficiency in the complaint regarding the liability of the present petitioner inasmuch as in para no. 1 itself of the complaint it had been categorically pleaded by the complainant that the Directors, respondents no. 2 to 4 in the complaint, including the present petitioner were in-charge and responsible for the affairs and business of the said Company.

5. The Hon'ble Supreme Court in the S.M.S. Pharmaceutical's and N.K.Wahi's case(supra) has held that in a complaint under Section 138 Negotiable Instruments Act filed against a Company any of its Directors are also impleaded as accused persons then the complaint must contain an averment that these Directors were in-charge and responsible for the conduct of the business of the Company at the time of commission of the offence. However, in the present case the complainant had not averred in its complaint that the present petitioner was in-charge and responsible for the management of the affairs of the accused Company at the time of the commission of the offence alleged to have been committed by the accused Company and a simple averment to the effect that the petitioner was in-charge and responsible for the affairs of the accused Company

will not satisfy the requirement of law, as laid down by the Hon'ble Supreme Court in the above referred two cases. Therefore, the learned Magistrate was not justified in entertaining the complaint against the present petitioner and summoning him as an accused.

6. In the result, this petition is allowed and the complaint filed against the petitioner by M/s. Nairsons IT Pvt. Ltd., respondent no. 2 herein, under Sections 138/142 of the Negotiable Instruments Act as well as the order of the learned Metropolitan Magistrate dated 3rd January, 2003 summoning him as an accused are hereby quashed.

November 7, 2007 **P.K.BHASIN,J**

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